the reasonableness of this dominant opinion is shown by an analysis of the business itself. Every prudent member of the community, for whom insurance in some form has become a necessity, is at the mercy of a few powerful corporations which frequently act in concert to extort unreasonable rates.[18] Here is a situation which amply justifies regulation as far as it has gone, and, the court concludes, measuring the limits of the power by the extent of the public needs, "How can it be said that fixing the price of insurance is beyond that power and the other instances of regulation are not?"

No legislative fiat can force a business into the province where this power is operative, for the elements which warrant its exercise are beyond legislative control. Few employments are of such intrinsic public importance as to make regulation of their prices essential to the public welfare. But in the light of these decisions it must be clear that abstract principles of liberty and antiquated economic theories can no longer be invoked to justify the abuse of an economic advantage, however honestly it may have been acquired.

THE DISSOLUTION OF THE INTERNATIONAL HARVESTER COMPANY. — Two things are forbidden in the two famous opening sections of the Sherman Act, — combination in restraint of trade, and monopoly.[1] Prior to 1910 these vital words in the statute were confined to their strict linguistic value and no more, and there are extreme authorities from that period to the effect that any cutting down of competition whatever is *ipso facto* illegal if the result of combination.[2] But in 1910 the Supreme Court of the United States by its decisions and *dicta* in the Standard Oil and Tobacco cases wrought a profound change in what was generally understood to be the law, and declared illegal only those combinations which diminish competition and at the same time either in purpose or result jeopardize the business welfare of the general public or of private individuals.[3] In both decisions the key-note is the defendant's unfair methods and abuse of power; in other words, the statute was interpreted in the light of the "rule of reason."

If combinations in restraint of trade as prohibited by the first section of the Act are to be tested by this new standard, it is difficult to find an

Ill. 272, 73 N. E. 423; Equitable L. Assurance Soc. *v.* Com., 113 Ky. 126, 67 S. W. 388; providing for increased recovery penalty in case of rate agreements — German All. Ins. Co. *v.* Hale, 219 U. S. 307; regulating rates — Citizens' Ins. Co. *v.* Clay, 197 Fed. 435.

A statute requiring insurance companies to charge reasonable rates has been in force in New Hampshire for fifteen years, but has apparently never been passed upon in the courts. NEW HAMPSHIRE LAWS, 1899, c. 85, § 1.

[18] For two instances which have gotten into the reports, see Bell *v.* Louisville Board of Fire Underwriters, 146 Ky. 841, 143 S. W. 388; State of New Jersey *v.* Fireman's Ins. Co., 74 N. J. E. 372, 73 Atl. 80.

[1] Chap. 647, LAWS OF 1890; 26 U. S. STAT. AT LARGE, 209; 1 REV. ST. U. S. SUPP., 2d ed., 762.

[2] United States *v.* Joint-Traffic Association, 171 U. S. 505; United States *v.* Trans-Missouri Freight Association, 166 U. S. 290.

[3] Standard Oil Co. *v.* United States, 221 U. S. 1. See especially the dissenting opinion of Harlan, J., which is based on the argument that the Supreme Court is reversing itself. United States *v.* American Tobacco Co., 221 U. S. 106. See article by Robert L. Raymond, 25 HARV. L. REV. 31.

adequate basis for dissolving the International Harvester Company, as was done recently by a Federal District Court. *United States* v. *International Harvester Co.*, 214 Fed. 987 (Dist. Ct. Minn.).[4] The prosecution failed to prove any undue enhancement of prices, limiting of production, cutting of wages or the prices on raw materials, or any substantial use of unfair methods toward competitors, although the combination of six formerly independent manufacturers of harvesting machinery had been completed for over ten years.[5] And yet the corporation was dissolved. The majority seem to rest their opinion on the single fact that the corporation controls over 80 per cent of the total product. With due respect, it is submitted that this is a return to the earlier cases, for mere size cannot possibly constitute illegal restraint of trade under the present interpretation until it has been shown that unfair conduct characterized or injurious results flowed from the combination.

Nor does it satisfactorily appear that the Harvester Company has violated the second section of the statute, that "every person who shall monopolize, etc. . . . shall be guilty." Even if the word "monopoly" be taken strictly, the case against this corporation falls short, for the record shows that its percentage of the total product has materially decreased during the ten-year period, that a new competitor capitalized at $20,000,000 has successfully entered the field, and that other competitors have prospered and grown. But if it is premised, nevertheless, that the percentage of output is so overwhelming as to be conclusive on the question of power to control the industry, the issue is squarely raised of whether within the purview of the Act the essence of monopoly is to be regarded as power or the abuse of power. The conclusion seems irresistible that the rule of reason softens the provisions of the second section of the Act just as it does the first.[6] The language of Mr. Justice White in the Tobacco case indicates that the limitation of reasonableness is a rule of construction for the entire statute,[7] while in the Standard Oil case he describes the Act as purely declaratory, and says that at common law "monopolies were unlawful because of their restriction upon individual freedom of contract and their injury to the public." [8] He says in the Tobacco case that the majority rest their opinion not on the power and dominion of the corporation, but on its unlawful practices.[9] But the strongest support for this view is to be found in a case decided since 1910, where the Supreme Court declares that the unification of all the terminal facilities in a city is not under all circumstances illegal, but only becomes so when it appears that the control was wrongfully obtained or injuriously exercised.[10] Under this interpretation of the

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[4] The court was composed of three circuit judges, Sanborn, Smith, and Hook. Judge Sanborn dissented vigorously from the majority opinions. For a statement of the case see RECENT CASES, p. 114.

[5] The leading majority opinion makes no charge whatever of reprehensible conduct, the concurring judge expressly exonerates the defendants from such a charge, while the dissenting judge quotes at length from the record to show how exemplary have been the operations of the corporation.

[6] See 9 COL. L. REV. 104.

[7] 221 U. S. 106, 180.

[8] *Ibid.*, pp. 1, 54.

[9] *Ibid.*, pp. 106, 182.

[10] United States *v.* St. Louis Terminal, 224 U. S. 383, 394, 395. On p. 395 occurs a phrase which appears to be contradictory. The court says, "Whether it is an unreasonable restraint will depend upon the intent to be inferred from the extent of the

Sherman Act the dissolution of the International Harvester Company, or of any other combination that possessed the power to control an industry, could only be justified on proof that the power so held had been, or was about to be, abused to the injury of the public or individuals.

The decision of the Supreme Court will be awaited with widespread interest. To affirm the lower court and hold that mere size and the potential control of an industry constitute a sufficient basis for dissolution would devitalize completely the rule of reason. The case is consequently one of tremendous importance to American industry.

LEGISLATIVE MINIMUM WAGE FOR WOMEN AND MINORS. — The Fourteenth Amendment to the Constitution does not deprive the states of the right, in the exercise of the police powers of government, to take measures for protecting the safety, health, morals and welfare of their citizens.[1] While it is now recognized that a state may upon this ground regulate the conditions of labor in modern industry in the interest of social betterment, the constitutional limitations upon legislation of this character are not in general well defined. As regards limiting the hours of work, however, the prevailing doctrine has come to be that reasonable restrictions may be placed upon the length of daily employment of all women and children workers [2] and of men engaged in particularly dangerous and unhealthful occupations.[3] Decisions to this effect are plainly sound in view of the manifest necessity of protecting the health of such classes of workers from the peculiar risks to which they are subjected. On the other hand, the validity of minimum wage statutes had not been determined until the Supreme Court of Oregon recently held constitutional a statute which authorizes a commission to fix under criminal penalties a legal minimum wage for women and children employed in any industry. *Stettler* v. *O'Hara*, 139 Pac. 743.[4]

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control secured"; but the opinion taken as a whole isolates this single clause and justifies regarding the case as an authority for the proposition that it is not power but the abuse of it which constitutes a violation of the Sherman Act.

[1] Harlan, J., in Patterson *v.* Kentucky, 97 U. S. 504; and see article by Francis J. Swayze in 26 HARV. L. REV. 1. For an example of the broad application of the police power in another connection, see this issue of the REVIEW, p. 84.

[2] State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52; Muller *v.* Oregon, 208 U. S. 412; Wenham *v.* State, 65 Neb. 394, 91 N. W. 421; Commonwealth *v.* Hamilton Co., 120 Mass. 383; Ritchie Co. *v.* Wayman, 244 Ill. 509; People *v.* Elderding, 254 Ill. 579; Commonwealth *v.* Riley, 210 Mass. 387; State *v.* Somerville, 67 Wash. 638, 122 Pac. 324. Ritchie *v.* People, 155 Ill. 98, *contra*, has been distinguished by the later Illinois cases.

[3] Holden *v.* Hardy, 169 U. S. 366; *Ex parte* Boyce, 27 Nev. 299, 75 Pac. 1. *Re* Morgan, 26 Colo. 415, 58 Pac. 1071, *contra*. In the following case the nature of the employment was held not to justify the regulation: Lochner *v.* New York, 198 U. S. 45; and see *Ex parte* Westerfield, 55 Cal. 550. Without resorting to the exercise of the police power, the state may as a condition of letting its contracts enforce more stringent regulations as to hours of labor upon work done for itself or its municipalities. Atkin *v.* Kansas, 191 U. S. 207; Byars *v.* State, 2 Okla. Cr. 481. People *v.* Coler, 166 N. Y. 1, *contra*. On the same ground a minimum wage may be enforced in public employment. Malette *v.* Spokane, 137 Pac. 496 (Ore.). But see Street *v.* Varney Co., 160 Ind. 338, 66 N. E. 895.

[4] A statement of the facts of this case appears in RECENT CASES, p. 105.